

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHNNY RAMEY,

Plaintiff,

KIM TRAN, et al.,

Defendants.

CASE NO. 1: 05 CV 00228 AWI DLB P

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT PLAINTIFF'S  
IN FORMA PAUPERIS STATUS BE  
REVOKED AND PLAINTIFF BE ORDERED  
TO PAY THE \$250.00 FILING FEE  
WITHIN THIRTY DAYS

[Doc. 9]

Plaintiff Johnny Ramey ("plaintiff") is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 11, 2005, and was granted leave to proceed in forma pauperis on April 6, 2005. Research of the actions filed by plaintiff reveals that plaintiff is not entitled to proceed in forma pauperis. Accordingly, as set forth below, the court recommends that plaintiff's in forma pauperis status be revoked, and plaintiff be ordered to pay the \$250.00 filing fee in full within thirty days. If plaintiff fails to pay the \$250.00 filing fee within thirty days, this action should be dismissed.

28 U.S.C. § 1915 provides that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is

1 under imminent danger of serious physical injury.” A review of the record of actions filed by plaintiff  
2 reveals that plaintiff filed three or more actions that were dismissed as frivolous, as malicious, or for  
3 failing to state a claim upon which relief may be granted.<sup>1</sup> Thus, plaintiff is subject to 28 U.S.C. §  
4 1915(g) and is precluded from proceeding in forma pauperis unless plaintiff was, at the time the  
5 complaint was filed, under imminent danger of serious physical injury. The court has reviewed  
6 plaintiff’s complaint and finds that plaintiff has alleged no facts that support a finding that he was under  
7 imminent danger of serious physical injury. Thus, plaintiff may not proceed in forma pauperis in this  
8 action. Inasmuch as plaintiff was granted leave to proceed in forma pauperis in error, plaintiff’s in forma  
9 pauperis action should be revoked and plaintiff should be ordered to pay the \$250.00 filing fee in full  
10 within thirty days. If plaintiff fails to pay the filing fee in full, this action should be dismissed without  
11 prejudice.

12 Accordingly, based on the foregoing, the court HEREBY RECOMMENDS that:

- 13 1. Pursuant to 28 U.S.C. § 1915(g), plaintiff’s in forma pauperis status be revoked;
- 14 2. Plaintiff be ordered to pay the \$250.00 filing fee in full within thirty (30) days; and
- 15 3. This action be dismissed without prejudice if plaintiff fails to pay the filing fee in full  
16 within thirty days.

17 These Findings and Recommendations will be submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**  
19 after being served with these Findings and Recommendations, plaintiff may file written objections with  
20 the court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
21 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may  
22 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 IT IS SO ORDERED.

24 **Dated: March 10, 2006**  
3b142a

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

26  
27 <sup>1</sup> See CV-F-98-5450 AWI DLB P Ramey v. County of Fresno (dismissed on August 20, 1998 for failure to state  
28 a claim); CV-F-97-6215 OWW DLB P Ramey v. Sylvester (Defendants’ motion for judgment on the pleadings pursuant to  
Federal Rule of Civil Procedure 12(c) granted on March 29, 1999; motion not treated as a motion for summary judgment);  
and CV-F-98-6327 OWW SMS P Ramey v. Loo (dismissed on May 25, 1999 for failure to state a claim).